

AMENDED IN SENATE JUNE 28, 2007

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1393

**Introduced by Assembly Members Leno and Maze
(Coauthor: Assembly Member Aghazarian)**

February 23, 2007

An act to amend Sections 6258 and 6259 of, and to add Sections 6253.3, 6257, and 6259.1 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1393, as amended, Leno. Public records.

The California Public Records Act requires state and local agencies to make their records available for public inspection and, upon request of any person, to provide a copy of any public record unless the record is exempt from disclosure.

This bill would, as of January 1, 2009, require any state agency that publishes an Internet Web site to include on the homepage of that site specified information that is not exempt from disclosure under the act about how to contact the agency, how to request records under the act, and a form for submitting online requests for records. It would authorize any person to bring an action to enforce the duty of a state agency to post this information and would provide for penalties including monetary awards to be paid by the agency, with specified provisions to become operative on January 1, 2009.

The bill would also authorize a person to request the Attorney General to review a local agency's denial of a written request to inspect or

receive a copy of a public record and would require the Attorney General to issue a written decision within 20 working days of the date the written request and written response or lack of response of an agency is received by the Attorney General. The bill would require the Attorney General to maintain copies of the opinions issued pursuant to these provisions, to publish the opinions annually in a special volume, and to make them available on the Internet.

This bill would require the Department of Justice to convene an advisory task force with a specified membership, to consider specified issues with respect to a statutory standard governing the posting of certain activities under the act, and to report its findings and recommendations to the Governor and the Legislature by no later than September 30, 2008.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6253.3 is added to the Government Code,
- 2 to read:
- 3 6253.3. Every state agency that publishes an Internet Web site
- 4 shall include on the homepage of that site, prominently displayed
- 5 ~~without scrolling~~ *and easily visible without scrolling when viewing*
- 6 *the homepage on a desktop monitor*, the words “Public Records
- 7 Center,” which shall be followed by, or shall link to, on another
- 8 page, both of the following:
- 9 (a) Under the words “Whom to Contact,” the title, mailing
- 10 address, telephone number, and e-mail address of the public
- 11 information officer or other person or persons to whom requests
- 12 for inspection or copying of records pursuant to the California
- 13 Public Records Act, or informal requests for simple factual
- 14 information, should be directed.
- 15 (b) (1) Under the words “How to Request Records,” the written
- 16 guidelines authorized or required under subdivision (a) of Section
- 17 6253.4, and ~~an HTML form~~ *a form, in HTML or a comparable*
- 18 *alternative technology*, for submitting online requests under the
- 19 California Public Records Act, consisting of all of the following
- 20 labeled fields:
- 21 (A) Today’s date.
- 22 (B) My name (optional).

- 1 ~~(C)~~ My e-mail address (optional).
- 2 ~~(D)~~ My postal address (optional).
- 3 ~~(E)~~ My telephone number (optional).
- 4 (C) My contact information, including at least one of the
- 5 following:
- 6 (i) My e-mail address.
- 7 (ii) My postal address.
- 8 (iii) My telephone number.
- 9 ~~(F)~~
- 10 (D) I am interested in the following records or information:
- 11 ~~(G)~~
- 12 (E) Where can I inspect these records?
- 13 ~~(H)~~
- 14 (F) Send me copies of the records.
- 15 ~~(I)~~
- 16 (G) Send me a fee estimate before copying.
- 17 (2) The ~~HTML~~ submitted form shall be designed to send a copy
- 18 of the request immediately and automatically to the e-mail address
- 19 listed on the ~~HTML~~ form, if an e-mail address is provided by the
- 20 person submitting the form.
- 21 (c) This section shall become operative on January 1, 2009.
- 22 SEC. 2. Section 6257 is added to the Government Code, to
- 23 read:
- 24 6257. (a) (1) A person may request the Attorney General to
- 25 review a local agency's denial of a written request to inspect or
- 26 receive a copy of a public record by delivering a copy of the request
- 27 and the written response by the agency denying, in whole or in
- 28 part, the request to the office of the Attorney General within 20
- 29 days of receipt of the agency's written denial. In the case of the
- 30 failure of an agency to provide any response under Section 6253
- 31 to a public records request within the time limits specified by this
- 32 chapter, the person may seek review by the Attorney General by
- 33 providing a copy of the request and the circumstances under which
- 34 it was sent to the agency no less than 20 days and no more than
- 35 40 days after the request was delivered or mailed to the agency.
- 36 The Attorney General may grant relief from the 40-day time limit
- 37 upon a showing by the person seeking relief that he or she refrained
- 38 from requesting review within the 40-day time limit because the
- 39 person reasonably relied upon representations of the agency that
- 40 a response would be forthcoming.

1 (2) The person seeking review shall demonstrate by means of
2 written proof of service or other credible and reliable means that
3 a copy of his or her request for review has been delivered to the
4 denying agency. Within 20 working days of receipt of the request
5 for review that complies with the requirements of this subdivision,
6 the Attorney General shall issue a written opinion stating whether
7 the agency’s response or lack of response complied with this
8 chapter.

9 (b) For good cause, the Attorney General may extend by 30
10 working days the time to issue an opinion under this section by
11 sending written notice to the complaining party and a copy to the
12 denying agency stating the reasons for the extension and the day
13 on which a decision is expected to be issued. As used in this
14 section, “good cause” means any of the following:

15 (1) The need to obtain additional information from the agency
16 or the requester.

17 (2) The need to conduct research on issues of first impression.

18 (3) An unmanageable workload.

19 (4) Unanticipated absence of staff assigned to a particular
20 request, or similar unavoidable circumstance.

21 (c) The Attorney General may solicit additional information or
22 explanation from the denying agency, including copies of the
23 records claimed to be exempt, or a detailed explanation of the
24 content of the information in those records. The denying agency
25 may, within 10 working days from the date of receipt of the request
26 pursuant to subdivision (a), submit any additional information or
27 explanation it deems relevant. However, the records or other
28 information for which an exemption is claimed shall not be
29 provided except in response to a request by the Attorney General
30 and shall not be disclosed by the Attorney General. The Attorney
31 General shall return or destroy nondisclosable records received
32 under this subdivision upon completion of the review and shall
33 not use the records for any other purpose. The agency need not
34 provide records or information but failure to do so without adequate
35 justification under the circumstances of the case may be considered
36 in assessing the sufficiency of the agency’s written denial under
37 review.

38 (d) Upon completion of the opinion pursuant to this section, the
39 Attorney General shall immediately mail a copy of it to the person

1 requesting review and to the state or local agency that denied access
2 to the record in question.

3 (e) The Attorney General shall maintain copies of opinions
4 issued pursuant to this section at each of his or her legal offices
5 for purposes of public inspection. The Attorney General shall cause
6 to be published annually a special volume of opinions issued under
7 this section and shall make the opinions available on the Internet.
8 The Attorney General may charge a fee for the sale of the volumes
9 not to exceed the reasonable cost of publication and distribution.

10 (f) Notwithstanding any other provision of law, neither the
11 Attorney General, nor the Department of Justice, nor any of its
12 staff shall be subject to suit or to discovery in any suit for any
13 action taken as a result of review under this section.

14 (g) An opinion issued under this section does not affect the right
15 of a person to enforce his or her right to inspect or to receive a
16 copy of any public record through an action pursuant to Sections
17 6258 and 6259. A person shall not be required to exhaust the
18 administrative remedies available in this section prior to filing a
19 legal action. If a person elects to bring an action under Sections
20 6258 and 6259, the Attorney General shall not proceed under this
21 section. If a person elects to seek review under this section, no
22 legal action may be brought against the agency whose decision is
23 the subject of the opinion until 10 days after the issuance and
24 mailing of the opinion. A person may withdraw, by written notice,
25 his or her request for review under this section if the withdrawal
26 notice is received by the Attorney General prior to the issuance of
27 an opinion.

28 SEC. 3. Section 6258 of the Government Code is amended to
29 read:

30 6258. Any person may institute proceedings for injunctive or
31 declarative relief or writ of mandate in any court of competent
32 jurisdiction to enforce his or her right to inspect or to receive a
33 copy of any public record or class of public records under this
34 chapter, or to enforce the duty of a state agency to post information
35 in its office and on its Internet Web site, if any, in compliance with
36 Section 6253.3. The times for responsive pleadings and for hearings
37 in these proceedings shall be set by the judge of the court with the
38 object of securing a decision as to these matters at the earliest
39 possible time.

1 SEC. 4. Section 6259 of the Government Code is amended to
2 read:

3 6259. (a) Whenever it is made to appear by verified petition
4 to the superior court of the county where the records or some part
5 thereof are situated that certain public records are being improperly
6 withheld from a member of the public, the court shall order the
7 officer or person charged with withholding the records to disclose
8 the public record or show cause why he or she should not do so.
9 The court shall decide the case after examining the record in
10 camera, if permitted by subdivision (b) of Section 915 of the
11 Evidence Code, papers filed by the parties, and any oral argument
12 and additional evidence as the court may allow.

13 (b) If the court finds that the public official's decision to refuse
14 disclosure is not justified under Section 6254 or 6255, he or she
15 shall order the public official to make the record public. If the
16 judge determines that the public official was justified in refusing
17 to make the record public, he or she shall return the item to the
18 public official without disclosing its content with an order
19 supporting the decision refusing disclosure.

20 (c) In an action filed on or after January 1, 1991, an order of
21 the court, either directing disclosure by a public official or
22 supporting the decision of the public official refusing disclosure,
23 is not a final judgment or order within the meaning of Section
24 904.1 of the Code of Civil Procedure from which an appeal may
25 be taken, but shall be immediately reviewable by petition to the
26 appellate court for the issuance of an extraordinary writ. Upon
27 entry of any order pursuant to this section, a party shall, in order
28 to obtain review of the order, file a petition within 20 days after
29 service upon him or her of a written notice of entry of the order,
30 or within any further time not exceeding an additional 20 days as
31 the trial court may for good cause allow. If the notice is served by
32 mail, the period within which to file the petition shall be increased
33 by five days. A stay of an order or judgment shall not be granted
34 unless the petitioning party demonstrates it will otherwise sustain
35 irreparable damage and probable success on the merits. Any person
36 who fails to obey the order of the court shall be cited to show cause
37 why he or she is not in contempt of court.

38 (d) The court shall award court costs and reasonable attorney's
39 fees to the plaintiff should the plaintiff prevail in litigation filed
40 pursuant to this section. The costs and fees shall be paid by the

1 public agency of which the public official is a member or employee
2 and shall not become a personal liability of the public official. If
3 the court finds that the plaintiff's case is clearly frivolous, it shall
4 award court costs and reasonable attorney's fees to the public
5 agency.

6 (e) (1) If a state or local agency (A) declines to comply with a
7 request to inspect or copy a record that is publicly accessible
8 pursuant to this chapter; (B) delays in responding to the request,
9 or in producing the requested records, for reasons that are unstated
10 to the requester, or that are unsupported by compelling
11 circumstances, or that otherwise demonstrate a lack of the diligence
12 required to make records available promptly, without delay or
13 obstruction, pursuant to the standards and deadlines of Section
14 6253; (C) imposes conditions precedent to access to records that
15 are not authorized by this chapter, including, but not limited to,
16 the payment of copy fees in excess of an applicable statutory fee
17 or the direct cost of duplication pursuant to Section 6253 or 6253.9;
18 or (D) otherwise frustrates timely and complete access; and the
19 court determines that the agency acted in bad faith or with reckless
20 disregard of the agency's obligations under this chapter, the court,
21 in its discretion, may make an award not to exceed one hundred
22 dollars (\$100) per day for each day, as determined by the court,
23 that the agency's action resulted in the denial of the plaintiff's
24 right to copy or inspect the record or records in question. *If the*
25 *plaintiff first sought review of the public agency's denial of a*
26 *review of a written request pursuant to Section 6257 before seeking*
27 *a court review pursuant to this section, 50 percent of an award*
28 *made pursuant to this subdivision shall be paid to the plaintiff and*
29 *the other 50 percent shall be paid to the Office of the Attorney*
30 *General.*

31 (2) In determining the amount of an award under this
32 subdivision, the court shall consider all the facts and circumstances
33 surrounding the agency's decision, including, but not limited to,
34 all of the following:

35 (A) Whether the agency unreasonably failed to respond within
36 the time periods set forth in Section 6253 or otherwise engaged in
37 conduct that caused undue delay.

38 (B) Whether the agency's justification for denying the request
39 was reasonably based upon its perceived obligation to protect the
40 rights of persons or entities identified in the requested records.

1 (C) Whether the agency has developed publicly accessible
2 internal operating ~~procedures~~ *under Section 6253.3* or guidelines
3 under Section 6253.4.

4 (D) Whether the plaintiff acted in good faith in pursuing the
5 request.

6 (E) Whether the agency's denial or other conduct inconsistent
7 with this chapter was based on a reasonable interpretation of the
8 law.

9 (f) An award pursuant to this section shall not exceed a total of
10 ten thousand dollars (\$10,000) for the record or records in question.

11 SEC. 5. Section 6259.1 is added to the Government Code, to
12 read:

13 6259.1. (a) Whenever it is made to appear by verified petition
14 to the superior court of the county wherein the plaintiff resides
15 that a state agency has failed to comply with the requirements of
16 Section 6253.3, the court shall order the officer or person charged
17 with posting the information as required by that section, or if no
18 such person has been appointed, the senior officer in the agency,
19 to effectuate compliance forthwith or show cause why he or she
20 should not do so. The court shall decide the case after examining
21 papers filed by the parties and any oral argument and additional
22 evidence as the court may allow.

23 (b) If the court finds that the agency has failed to comply with
24 Section 6253.3, he or she shall order the officer or person ordered
25 to show cause to effectuate compliance forthwith.

26 (c) Upon entry of any order pursuant to this section, a party
27 shall, in order to obtain review of the order, file a petition within
28 20 days after service upon him or her of a written notice of entry
29 of the order, or within any further time not exceeding an additional
30 20 days as the trial court may for good cause allow. If the notice
31 is served by mail, the period within which to file the petition shall
32 be increased by five days. A stay of an order or judgment shall not
33 be granted unless the petitioning party demonstrates that it will
34 otherwise sustain irreparable damage and probable success on the
35 merits. Any person who fails to obey the order of the court shall
36 be cited to show cause why he or she is not in contempt of court.

37 (d) If the plaintiff prevails in an action filed pursuant to this
38 section, the court shall award court and discovery costs and
39 reasonable attorney's fees to the plaintiff. The costs and fees shall
40 be paid by the state agency of which the public official is a member

1 or employee and shall not become a personal liability of the public
2 official. If the court finds that the plaintiff's case is clearly
3 frivolous, it shall award court costs and reasonable attorney's fees
4 to the agency.

5 (e) This section shall become operative on January 1, 2009.

6 SEC. 6. (a) The Department of Justice shall convene an
7 advisory task force to consider and make recommendations for a
8 statutory standard governing the posting of requests and denials,
9 and public documents that are subject to disclosure, under the
10 California Public Records Act (Chapter 3.5 (commencing with
11 Section 6250) of Division 7 of Title 1 of the Government Code),
12 on the Internet Web sites of state agencies.

13 (b) Members of the task force shall include all of the following:

14 (1) State agency or board representatives.

15 (2) Representatives of the Department of Information
16 Technology.

17 (3) Representatives of organizations with expertise in technical
18 policy and practices of Internet disclosure.

19 (4) Representatives of organizations with expertise in privacy
20 policy relevant to Internet disclosure.

21 (5) Representatives of organizations with expertise in fostering
22 public integrity and accountability.

23 (6) Representatives of organizations with expertise in informed
24 electoral participation.

25 (7) Representatives of organizations with expertise in
26 investigative journalism.

27 (8) Representatives of legislative staff, at the option of the
28 applicable legislative oversight entities, and to the extent not in
29 conflict with their legislative duties.

30 (c) The task force shall consider at least all of the following
31 issues:

32 (1) Whether it is of greater value to the public for state agencies
33 to automatically post, with appropriate security and privacy
34 controls, certain public records that are subject to disclosure under
35 the act on agency Internet Web sites rather than making those
36 records available to requesters on a request-only basis. Specific
37 consideration shall be given to records that relate to the
38 compensation and economic interests of key public officials and
39 consultants, and the performance of public agencies, including,
40 but not limited to, the settlement of litigation. Specific

1 consideration should also be given to what specific advantages or
2 disadvantages may be associated with an affirmative Internet
3 posting requirement.

4 (2) Whether eventual cost savings or increases in efficiency, or
5 both, are likely to offset the implementation and management costs
6 of requiring state agencies to automatically post disclosable public
7 records on their Internet Web sites, and whether certain types of
8 public records are better suited to automatic disclosure based on
9 these cost and efficiency considerations.

10 (3) Whether appropriate security measures are available, and
11 cost effective, to ensure that the personal or proprietary information
12 contained in a public record that is posted on the Internet is
13 protected from the possibility of identity theft or other forms of
14 misuse.

15 (4) Whether appropriate security measures are available, and
16 cost effective, to ensure that disclosable public records posted on
17 the Internet are protected from alteration by third parties or other
18 forms of misuse.

19 (5) Other issues that might arise from a statutory requirement
20 that certain public records be automatically posted on agency
21 Internet Web sites.

22 (d) The task force shall report its findings and recommendations
23 to the Governor and the Legislature by no later than September
24 30, 2008, at which time it shall cease to exist.